IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/04/2003

CORAM

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION NO. 18939 OF 2001
AND
W.P.M.P.NO.27851 OF 2001

Dr.T.Venkataraman .. Petitioner

-Vs-

1. The Director of Collegiate Education,
College Road, Chennai-6.

2. The Secretary,
D.G.Vaishnav College,
Arumbakkam, Chennai-106.

3. The Registrar,
University of Madras,
Cehapauk, Chennai-5.

4. Mr.B.Krishnan .. Respondents

For Petitioner : Mr. P.Jyothimani

For Respondent : Mr. AL.Somayaji, SC -R2
Mr.Ezhilmani for R3

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Certiorarified Mandamus for the reliefs as stated therein.

:ORDER

The petitioner prays for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent pertaining to the impugned proceedings No.468 dated 29-9-2001, to quash the same and direct the second respondent to consider and appoint the petitioner as 'Principal' of the second respondent college, namely, D.G. Vaishnav College, Arumbakkam, Chennai-106.

2. Though very many contentions were raised while seeking for the

issuance of the above writ, Mr.Jyothimani, learned counsel appearing for the petitioner, mainly concentrated his submissions on the ground that the fourth respondent does not satisfy the required qualification for being appointed as the 'Principal' of the second respondent college. He also contended that the appointment of the fourth respondent was not fully approved by the third respondent University, inasmuch as, the resolution dated 4-10-2001 of the third university respondent granting the approval was only provisional subject to verification of records of the selection by the University. According to the learned counsel, as per UGC Notification of March 2000 prescribing the qualifications for the various posts including the post of ' Principal, and the qualification for the post of 'Principal' is 'a Master's Degree with at least 55% of the marks or its equivalent grade of B in the 7 point scale apart from possessing 'Ph.D.' along with experience of 15 years if the selection is from Professor's Grade and 10 years experience if the selection is from the Reader's Grade. The learned counsel further contended that by virtue of the powers vested with the UGC, under Section 26(e) of the UGC Act, 1956 (hereinafter referred to as 'the UGC Act), the qualifications prescribed by the UGC alone would prevail and any claim of either the second respondent or the third respondent university to the effect that the qualifications can also be prescribed by the third respondent is not valid. According to the learned counsel, the post of a 'Principal' can only be made by way of selection for appointment from 'open advertisement' and can never be by way of promotion. The learned counsel relied upon a communication of the UGC dated 11-10-2001 in support of his submissions.

3. While referring to Rule 11(4) of the rules framed under the Tamil Nadu Private Colleges Regulation Rules, 1976, the learned counsel contended that by virtue of Article 254 of the Constitution, the power given to the UGC under Section 26(e) of the UGC Act would prevail, that in any event, when even Rule 11(4) talks of qualified teachers, the qualification as prescribed by the UGC is 'Ph.D. along with possession of P.G. with at least 55% of marks and inasmuch as, the fourth respondent does not possess a 'Ph.D', he is not even entitled to be considered. The learned counsel also relied upon G.O.Ms.No.111 dated 24 -3-1999, by which, the State of Tamil Nadu adopted the UGC Regulations prescribing the qualifications for the post of 'Principal'.

4. The learned counsel relied upon a decision of the Division Bench of this Court reported in 1994 (1) M.L.J 130 (D.JEYASELVI versus THE GOVERNMENT OF TAMIL NADU, REP. BY ITS SECRETARY EDUCATION DEPARTMENT, MADRAS & ANOTHER) in support of his conten that when the rule specifies that the promotion should be based on merit and ability, the Court should still be satisfied based on the records of the Selection Committee that on what basis, it came to the conclusion as between two candidates, the one selected was superior both on merit and ability.

5. The learned counsel also relied upon A.I.R.1987 SC 311(FRANK ANTHONY PUBLIC SCHOOL EMPLOYEES' ASSOCIATION versus UNION OF INDIA & OTHERS) in particular, Para 16 to stress upon the need for prescribing the minimum qualifications of teachers, which, in turn, was to ensure that they render better service to the institution and the students.

6. He also relied upon the judgment reported in A.I.R.1995 SC 336 (

UNIVERSITY OF DELHI versus RAJ SINGH & OTHERS), Para 21 to contend that the UGC regulations are intended to have the widest possible applications and that under Section 26 (1) (e) of the UGC Act, the UGC was the competent Authority to define the qualifications that are ordinarily required to the post of a lecturer.

7. As against the above submissions, Mr.AL.Somayaji, learned Senior counsel appearing for the second respondent contended that G.O.Ms.No.111 dated 24-3-1999 has been set aside by this Court in the Judgment reported in 2000(IV) CTC 641 and therefore, same cannot be relied upon. The learned Senior counsel contended that after the resolution of the third respondent dated 4-10-2001, by a communication dated 8-5-2002, final approval has been granted by the third respondent and therefore, the contention that the appointment of the fourth respondent lacks the approval of the third respondent cannot be considered. According to the learned Senior counsel, the petitioner having participated in the selection and lost his chance, it is no longer open to him to challenge the selection. It was further contended that when the contention relating to qualifications has not been specifically pleaded in the affidavit filed in support of the Writ Petition, such a contention cannot be permitted to be made at this stage. As regards the prescription of the qualification of the UGC, according to the learned Senior counsel, when the selection is made by way of promotion, the qualifications prescribed by the third respondent in its communication dated 19-7-1995 would prevail, as per which, the possession of Ph.D. is not required and therefore, the selection and appointment of the fourth respondent cannot be found fault with. The learned counsel relied upon G.O.Ms.No.1785 dated 5-12-1988 in support of the above submission. The learned counsel would also contend that as the selection of the fourth respondent was to the satisfaction of the third respondent University, the University went ahead to nominate the fourth respondent as the University representative on the Governing Body (Executive Committee of Gurunanak College, Velachery, Chennai-600 042) and also by including him as an ex-officio Member of the Academic Council of the third respondent University as per Section 23-A of The Madras University Act with effect from 01.10.2001. The learned counsel relied upon 1995 W.L.R. 420 (C.ARUMUGAM versus UNIVERSITY OF MADRAS, REP. BY ITS REGISTRAR, CHEPAUK, MADRAS) in support of his submissions.

8. Mr.Ezhilmani, learned counsel appearing for the third respondent, after referring to Section 19(1) of the Madras University Act, contended that the syndicate has been vested with the powers to prescribe the qualifications of teachers, that in the communication dated 19-7-1995, the University has prescribed the qualification for the post of 'Principal' by way of promotion which does not prescribe a 'Ph.D.' and therefore, the resolution of the third respondent dated 4-10-2001 provisionally approving the appointment of the fourth respondent and confirmation of the said approval in the communication dated 8-5-2002 will hold good.

9. Mr.Jyothi Mani, learned counsel for the petitioner, by way of reply, submitted that though the University made a vain attempt to insist that it can prescribe its own qualifications and sought for certain amendments, the UGC, in its communication dated 03.10.2001 to the third respondent University, made it clear that the University has got no power to grant any relaxation or

exemption in regard to the qualifications prescribed by the UGC or rather prescribe any qualification which are contrary to the UGC regulations. Further, the learned counsel points out that the UGC has made its position very clear in its communication dated 11.10.2001 to All India Federation of University and College Teachers' Organisation to the effect that Ph.D. is a compulsory requirement for appointment of 'Principal' with effect from 24 .12.1998 as per the UGC regulations and that the regulations prescribing such qualifications with effect from 04.04.2000 are mandatory in nature. The said communication also made it clear that the post of 'Principal' has to be filled through direct recruitment only and no promotion is allowed.

10. The learned counsel also points out that the third respondent's communication to the Under-Secretary of UGC on 09.07.2002 stating that the qualification prescribed by the UGC was not applicable to the appointment of fourth respondent is quite contrary to the very UGC regulations and therefore, the same cannot be acted upon. As regards G. O.Ms.No.111 dated 24.03.1999, which was quashed by the learned single Judge, the learned counsel contended that as against the order of the learned single Judge, W.A.No.1347 of 2001 has been preferred and that the same is also pending. The learned counsel, therefore, contended that the petitioner being superior in qualification as well as on merits when compared to the fourth respondent, while setting aside the order impugned in the Writ Petition, the petitioner should be directed to be appointed to the post of 'Principal' of the second respondent institution.

11. After hearing the learned counsel for the petitioner and the respondents, the questions that arise for consideration and the points to be decided can be formulated as under:
(i) What is the qualification that is prescribed for the post of a ''Principal''?
(ii) Whether the post of a ''Principal'' can be filled by way of promotion or should be done only through open advertisement?
(iii) Whether the fourth respondent satisfies the prescribed qualification for holding the post of a 'Principal'?
(iv) Whether the petitioner can be appointed as ''Principal'' of the second respondent college?

12. Before dealing with the various questions that arise for consideration, I wish to steer clear the stand of the second respondent as regards the competence of the petitioner to raise this issue without making any reference to it in the affidavit filed in support of the Writ Petition. For that purpose, Mr.AL.Somayaji, learned Senior counsel appearing for the second respondent relied upon 1998(7) SCC 469 (RANI LAXMIBAI KSHETRIYA, GRAMIN BANK versus CHAND BEHARI KAPOOR AND OTHERS). I am unable to accept the contention of the second respondent, as well as, the reliance placed upon the above referred to judgment. In fact, in para 8 of the said judgment, the Hon'ble Supreme Court has set out the legal position as under:
"8. ... It is too well settled that the petitioner who approaches the Court invoking the extraordinary jurisdiction of the Court under Article 226 must fully aver and establish his rights flowing from the bundle of facts thereby requiring the respondent to indicate its stand either by denial or by positive assertions. But in the absence of any averments in the writ petition

or even in the rejoinder-affidavit, it is not permissible for a court to arrive at a conclusion on a factual position merely on the basis of submissions made in the course of hearing. The High Court, therefore, in our view committed serious error in coming to the conclusion that there existed vacancies in the post of Field Supervisor on the materials produced before it. ..."

(Underlining is mine)

From a reading of the above extracted portion of the judgment, I am convinced that the issue which has now been raised in the course of submission by the learned counsel for the second respondent cannot be said to be purely a question of fact, but a mixed question of fact and law. The factual aspect of it relates to the possession of certain qualifications, while the legal aspect of it is whether such qualification would fit into the qualifications prescribed under the Regulations framed by the UGC. As far as the possession of qualifications is concerned, the same is not in dispute as between the parties. As far as the legal issue raised is concerned, the same is covered by the Regulations framed by the UGC. Therefore, the reliance placed upon the above referred to judgment cannot be applied to the case on hand. I, therefore, reject the said submission made on behalf of the second respondent. While dealing with the first question, when the contentions of the petitioner and the second and third respondents are considered, while the petitioner would contend that the qualification prescribed by the UGC Regulations alone can prevail, according to the second and third respondents, the qualification prescribed by the UGC Regulations will apply only in the case of a open market selection, while when a selection is made from amongst the existing teachers in the college itself, the qualification prescribed by the third respondent University which was in vogue and which was also spelt out in the third respondent's communication dated 19-7-1995 alone will apply. According to the learned counsel for the petitioner, the qualification was prescribed by the UGC Regulations in March 2000 which was also adopted by the third respondent University in its Syndicate Meeting held on 12-1-2001, which was also subsequently adopted by the Government of Tamil Nadu in G.O.Ms.No.111 dated 24-3-1999. It was also stressed on behalf of the petitioner that by virtue of Section 26(e) of the UGC Act, the qualification prescribed by it should be scrupulously followed. The other material relied upon by the petitioner is the communication of the UGC dated 11-10-2001 to All India Federation of University & College Teachers Organisation, wherein, it was reiterated that possession of Ph.D. is a mandatory requirement for appointment of any person to the post of a 'Principal' with effect from 24-12-1998. As far as G.O.Ms.111 dated 24-3-1999, it is not in dispute that the said Government Order was quashed by a learned Single Judge of this Court in the Judgment reported in 2000(4) CTC 641. Even though the learned counsel for the petitioner would contend that the order of the learned Single Judge is subject matter of a Writ Appeal in W.A.No.13 47 of 2001, since as on date, the Government Order has been quashed, there is no point in referring to the said G.O. for considering the qualifications prescribed by the UGC and the application of it to the colleges affiliated to the third respondent University.

13. De hors the said G.O.111 dated 24-3-1999, Section 26(e) of the University Grants Commission Act 1956 (hereinafter called as 'UGC Act') makes

it clear that the power is vested with the University Grants Commission to make regulations defining the qualifications, that should ordinarily be required of any person to be appointed to the teaching staff of the University having regard to the branch of education in which he is expected to give instructions. It is by virtue of the said power vested with the UGC under Section 26(e) of the UGC Act, the regulations came to be framed by the UGC which came to be notified in March 2000 in super-session of the regulations issued earlier in the year 1983, 1985, 1991 and 1998. Regulation (2) of the said UGC Regulations makes it clear that no person should be appointed to a teaching post in an University or in any of the institutions including constituent or affiliated colleges recognized under Clause (f) of Section 2 of the UGC Act, 1956 or in an institution deemed to be a University under Section 3 of the said Act in a subject if he/she does not fulfill the requirements as to the qualifications for the appropriate subjects as provided in the Annexure.
The Annexure has been captioned as under:
"Minimum qualifications for the post of Professors, Principals, Readers and Lecturers in subjects other than Fine Arts, Management, Engineering and Technology in Universities or Colleges for appointment of persons through open advertisement and for their Career Advancement."
Under the caption '1.0.0 Direct Recruitment', in so far as the post of ''Principal'' is concerned, in para 1.1.0 and 1.2.0, the qualifications required for the post of 'Principal' either from Professor's Grade or from the Reader's Grade respectively by way of direct Recruitment is shown, which reads as under:
"1.1.0 'Principal' (Professor's Grade)
1. A Master's Degree with at least 55% of the marks or its equivalent grade of B in the 7 point scale with latter grades O,A,B,C,D,E and F.

2. Ph.D. or equivalent published work.

3. Total experience of 15 years of teaching/Research in Universities/Colleges and other institutions of higher education.

"1.2.0 'Principal' (Reader's Grade)
1. A Master's Degree with at least 55% of the marks or its equivalent grade of B in the 7 point scale with latter grades O,A,B,C,D,E and F.

2. Ph.D. or equivalent published work.

3. Total experience of 10 years of teaching/Research in Universities/Colleges and other institutions of higher education."

14. As against the above prescription under the UGC Regulations, according to second and third respondents, there was a communication dated 19-7-1995 from the third respondent University to the Director of Collegiate Education, as well as, to all the affiliated Arts and Science Colleges of the third respondent University, wherein, the qualification prescribed for the post of a 'Principal' with the modification as suggested by the Academic Council dated 25-2-1995 has been indicated which reads as under:
"Arts & Science Colleges:

The Principal post may be filled either by promotion or by
Director Recruitment through advertisement in leading dailies:
I. BY PROMOTION:
For promotion, teachers who are on regular service in the concerned college or in any other college under the control of the educational agency, are eligible for appointment provided they are Selection Grade Lecturers with a minimum of 16 years of service in the Lecturer's cadre (Persons with Ph.D. or M.Phil., will have service benefit of 3 years and 1 year respectively). Seniority will be considered only where merit and ability are approximately equal.
'Merit' can be referred in terms of 'Academic Excellence' and ' ability' in terms of NCC, NSS, Dy.Warden Conferences, Seminars, participation like organisation or International Conferences.
II. BY DIRECT RECRUITMENT:
For Director Recruitment, a P.G.Degree with minimum of 55% of marks and Ph.D. shall be insisted upon along with a minimum service of 13 years as Lecturer or equivalent post.
In this regard I once again to reiterate that the Selection of Principal should be made through a duly constituted Selection Committee of the Governing Body/College Committee or the College and the particulars of the incumbent selected for the post has to be sent on request) along with a copy of the certificate from the Director of Collegiate Education, Madras, informing that "the incumbent is holding the post of Lecturer (Selection Grade -SC) together with his/her date of promotion to the post" for prior approval of the University."

15. While relying upon the said communication of the University, reliance was also placed upon G.O.Ms.No.1785 Education dated 5-12-1988, wherein, the State Government, while adopting the revised pay scales of College and University Teachers which were accepted by the UGC and communicated for the implementation and while referring to the scales of pay in which the Principals of the colleges should be placed, it is provided that appointment to the post of a 'Principal' should be made from among the holders of the posts of Lecturers (Selection Grade)/Readers in Colleges and that seniority in the post of Lecturer alone should be the criteria for the promotion. Reliance was also placed upon the said G.O. in order to contend that the Senior most person in the Department of College irrespective of his Ph.D. qualification, should be nominated and designated as 'Senior Lecturer/Selection Grade Lecturer/Reader and the Head of Department, though without any special pay to that post. By relying upon the above said G.O., and by reading the same along with the communication of the University dated 19-7-1995, it was contended that there could be an appointment of a person to the post of 'Principal' by way of promotion from among the Teachers who are on regular service in the college and that what was required was only that such Teacher should be a Selection Grade Lecturer with minimum of 16 years of service in the lecturer cadre. The said communication also provided that persons with Ph.D. or M.Phil., will only get a service benefit of three years and one year respectively and non-possession of Ph.D. would not disqualify a person from aspiring to become a 'Principal'.

16. In the light of the above stated provisions (i.e.) one by the UGC

and the other by the third respondent University prescribing qualifications for the post of 'Principal', the question is, which is to prevail?

17. In this context, it would be relevant to refer to the resolution of the Syndicate Meeting held on 12-1-2001. In the said Meeting, the syndicate of the third respondent University considered the communication of the UGC dated 4-4-2000 containing the notification of March 2000, wherein, the present UGC Regulations 2000 came to be communicated to the third respondent University and in the said Meeting, the syndicate resolved to adopt the UGC Regulations 2000 in respect of Teachers in the affiliated Arts and Science Colleges of the third respondent University including minority institutions and placed the same before the Academic Council. The only minor modification was to the caption of the Annexure to the UGC Regulations 2000, wherein, apart from Fine Arts Management, Engineering and Technology, the third respondent University also added 'Medicine' and thereby wanted to state that such minimum qualifications prescribed would be applicable in respect of all other institutions except those which were excepted, in other respects the Annexure to the UGC Regulations 2000 was adopted in toto.

18. A perusal of the Annexure disclose that for the post of a ' Principal' either from Professor's Grade or Reader's Grade, apart from a Master's Degree with 55% of marks, a Ph.D. or equivalent published work is the minimum qualification. While in the case of Professor Grade, 15 years experience in teaching is required, in the case of Reader Grade 10 years experience in teaching is prescribed. Therefore, according to the UGC Regulations, it is crystal clear that the possession of a Ph.D. is a must for the post of 'Principal'. In the caption to the Annexure and also in the sub title above the post of 'Principal', it is stipulated that appointment of persons with the minimum qualification prescribed to be made through "open advertisement" "direct recruitment". The said Annexure prescribes the qualifications for other categories of Teachers as well. At the end of the Annexure, in the Notes, it is provided to what extent, any relaxation can be shown. But even in that Notes, there is no provision for relaxation in the matter of qualifications for any post, much less the post of ' Principal'.

19. While in Annexure, under the sub title 1.0.0., Direct Recruitment is shown under which the post of 'Principal', 'Professor, Reader, Lecturer for various faculties are shown, under the caption 'Career Advancement' in para 2.0.0., the various other posts are shown. While under the caption 'Selection Committees Recommended by the UGC' in para 3.0.0., the selection of candidates recommended by the UGC for various posts are shown. While for all other posts other than the post of 'Principal' apart from the mode of Direct Recruitment, the method of selection by way of promotion is also provided, in so far as the post of 'Principal' is concerned, the only method of appointment prescribed is by way of 'Direct Recruitment'. Therefore, it will have to be stated that for the post of 'Principal', the appointment as per the UGC Regulations can be made only by way of a Direct Recruitment and there is no scope for promoting a person from the existing Teachers of the Institution by following any other method.

20. Therefore, for the post of 'Principal' apart from Master's

Degree, with minimum of 55% of marks or its equivalent grade, the possession of Ph.D. is a 'must' and the selection and appointment to the post of 'Principal' can only be by way of Direct Recruitment and Direct Recruitment alone. This position, in my view, is also strengthened by the subsequent communication of the UGC itself dated 11-10-2001 wherein, the Under Secretary, UGC has made it clear in no uncertain terms to the following effect:

"With reference to your letter dated 22-09-2001 regarding qualifications for the post of Principal, I would like to inform you that Ph.D. is a compulsory recruitment for appointment of Principal w.e.f.24-12 -1998. As per UGC's norms Ph.D. or equivalent published work is required. This has been notified as Regulations w.e.f. 4-4-2000. U.G.C.Regulations are mandatory in nature. The post of Principal is to be filled through direct recruitment only and no promotion is allowed. A copy of the UGC's circular in this regard is also enclosed for your information." (Underlining is mine)

21. The enclosed Circular is dated 6-6-2000 which was sent to the Registrar of all Universities, which reads as under:

"In continuation of this office letter No.F.3-1/94(PS) dated 24-12-1 998 regarding qualifications for the post of Principal, I would like to inform you that one of the essential qualifications namely "Ph.D. or equivalent qualification" should be read as "Ph.D. or equivalent published work". The Universities are requested to frame guidelines as per the provisions in their Arts & Statutes to establish the equivalence of the published work with the Ph.D."

22. Thus a reading of the UGC Regulations 2000 with its Annexure prescribing the qualifications for the post of 'Principal' specifically providing for its appointment by way of Direct Recruitment with the stress made by the UGC itself in its communication dated 11-10-2001, it can be safely concluded that for the post of 'Principal' in an institution like that of the second respondent, while the minimum qualification is, a PG Degree with 55% of marks, and also a Ph.D., or equivalent published work with the required experience and that any appointment to that post can only be by way of Direct Recruitment and not by way of Promotion.

23. Reliance placed upon by the second and third respondents on the University's letter dated 19-7-1995 providing for separate channel of promotion for the post of 'Principal' cannot therefore, be acceded to and such a provision stated to have been provided in the communication dated 19-7-1995 is wholly invalid. When once by the conduct of the third respondent University itself in adopting the UGC regulations in so far as it related to the prescription of the qualifications for the various posts by virtue of the operation of Section 26(e) of UGC Act is conceded, it cannot lie in the mouth of the third respondent University to contend that it can also provide a promotion channel and prescribe different qualification for the channel of promotion which will be in total violation of Section 26(e) of the UGC Act itself.

24. Therefore, such a contention put forth on behalf of the third

respondent or by the second respondent can not be countenanced. In support of such a contention, the learned counsel for the second respondent wanted to rely upon Rule 11(4) of the Tamil Nadu Private Colleges Regulation Rules 1976 framed under the provisions of the Tamil Nadu Private Colleges Regulation Act 1976. A reliance was placed upon Sub Rule 4(ii) of Rule 11, which states that a post can be filled up by promotion or by way of Direct Recruitment; that while making promotion, the claims of all the qualified teachers in the college should be considered; that if none of the qualified teachers in the college is found suitable for promotion, then only, the vacancy should be filled up by way of Direct Recruitment by calling for applications from the qualified persons etc. It was therefore, contended that when the said sub rule provides for filling up of any post by way of promotion in the first instance and only in the absence of any suitable person being available, resort can be had to direct recruitment, and since the appointment of the fourth respondent by the second respondent as he was found suitable by the Selection Committee based on the qualification he possessed, which qualification was as prescribed by the third respondent university in its communication dated 19-7-1995 the same cannot be interfered with.

25. In the first place, such an argument will have to be rejected on the ground that the reliance placed upon Rule 11(4)(ii) itself cannot be accepted in the light of the existence of the various provisions contained in the UGC Act and Regulations. Even according to the third respondent University, the power of the UGC for prescribing the qualifications as provided under Section 26(e) is not in dispute. In fact, the third respondent has indisputably adopted the UGC Regulations prescribing the qualifications for various teaching posts including for the post of 'Principal', in its Regulations of 2000 as per resolution adopted by the syndicate of the third respondent on 12-1-2001. Moreover, any violation of the UGC Regulations by the third respondent cannot be allowed to take place in view of the fact that the said Regulations framed by the UGC had acquired statutory status by virtue of the operation of the Section 28 of the UGC Act, by which, the Regulations came to be laid before the Parliament when it was in session. It is relevant to point out that under Section 14 of the UGC Act, if any University fails to comply with or contravenes any Regulation made under Clause (e) of Section 26, that would result in withholding of the very grant made out of the funds of the Commission to the University. In fact, such a stand was not taken by the third respondent. On the other hand, on behalf of the third respondent, it was fairly suggested that after adopting the UGC Regulations, in its syndicate resolution dated 12-1-2001, an attempt was made for certain modifications in the UGC Regulations of 2000, with regard to qualifications for the appointment of Professors, Principals, Readers and Lecturers, that inasmuch as, such amendments as proposed were not approved by the UGC, in the subsequent Meeting of the syndicate dated 9-11-2001, the proposed amendments were withdrawn. Therefore, after the Syndicate Resolution dated 12-1-2001 adopting the UGC Regulations of March 2000 , which alone prescribe the qualification for the post of 'Principal', there is no scope to contend that by virtue of Rule 11(4) of the Tamil Nadu Rules, a different qualification pescribed by the third respondent university for promotion can be followed.

26. I can also easily visualize the purport of the UGC in prescribing

the qualification for the post of 'Principal' and also restricting the selection of the appointment to the said post only by way of ' Direct Recruitment'. Apparently, such a prescription to has been made in the UGC Regulations. Having regard to the importance of the post of 'Principal' who is the Head of the Institution and who will be looked upon for the name and fame of the Institution both academically as well as administratively. The Hon'ble Supreme Court, while dealing with the post of even a 'School Headmaster', has this to say in the Judgment reported in '1998(6) SCC (N.AMMAD versus MANAGER, EMJAY HIGH SCHOOL AND OTHERS), the relevant part of it is found in paragraphs 1 8 to 22 which reads as under:

"18. Selection and appointment of Headmaster in a school (or Principal of a college) are prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This pristine precept remains unchanged despite many changes taking place in the structural patterns of education over the years.

"19. How important is the post of Headmaster of a school has been pithily stated by a Full Bench of the Kerala High Court in Aldo Maria Patroni V. E.C.Kesavan (1964 Ker LT 791), Chief Justice M.S.Menon has, in a style which is inimitable, stated thus:

"The post of the headmaster is of pivotal importance in the life of a school. Around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching. The right to choose the headmaster is perhaps the most important facet of the right to administer a school, and we must hold that the imposition of any trammel thereon - except to the extent of prescribing the requisite qualifications and experience - cannot but be considered as a violation of the right guaranteed by Article 30(1) of the Constitution. To hold otherwise will be to make the right 'a teasing illusion, a promise of unreality'.

"20. The importance of the key role which a Headmaster plays in the school cannot be better delineated than that. The nine-Judge Bench in the Ahmedabad St.Xavier's College Society (197(1) SCC 717) has highlighted the importance of the role of the Principal of a college. In support of majority view in that decision K.K.Mathew, J. has observed thus: (SCC petitioners.815-16, para 182)

182. It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution.

"21. H.R.Khanna, J. has adopted a still broader view that even selection of teachers is of great importance in the right to manage a school.

Learned Judge has stated thus: (SCC p.789, para 103)
"The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1)."

"22. Krishna Iyer, J. who dissented from the majority view in Gandhi Faiz-E-Am College V. University of Agra (1975(2) SCC 283: 1975 (3) SCR 810), has nevertheless, emphasised the importance of the post of the Principal in the following words: (SCC p.293, para 21)
"21. An activist principal is an asset in discharging these duties which are inextricably interlaced with academic functions. The principal is an invaluable insider - the Management's own choice - not an outsider answerable to the Vice-Chancellor. He brings into the work of the Managing Committee that intimate acquaintance with educational operations and that necessary expression of student-teacher aspirations and complaints which are so essential for the minority institution to achieve a happy marriage between individuality and excellence."
27. For all the above stated reasons, my answer to Questions No.1 is that the qualification prescribed for the post of a 'Principal' is necessarily a 'Ph.D.' or equivalent published work apart from a ' Master's Degree with at least 55% of the marks or its equivalent Grade of B in the 7 point scale with latter grades O,A,B,C,D,E and F, and if the person from the Professor's Grade, a total experience of 15 years and if he is from the Reader's Grade, a total experience of 10 years of teaching/Research in Universities/Colleges and other institutions of higher education.

28. Based on the above discussion, even in regard to the second question, it will have to be held that the post of a 'Principal' can be filled only by way of promotion and that should be done only through open advertisement.

29. In the light of the UGC Regulations of March 2000 and the subsequent clarification letter of the UGC dated 11-10-2001, the possession as regards the qualification and method of selection is cleared, then the question that arises for consideration is whether the fourth respondent possess the necessary qualification for holding the post of a 'Principal'. Admittedly, he does not possess any 'Ph.D' degree. Therefore, on that sole ground, he is disqualified from holding the post. Having regard to the fact that the fourth respondent lacks the minimum qualification for holding the post of a 'Principal' his very selection and the consequent appointment as 'Principal' of the second respondent college by the proceedings dated 29-9-2001 is on the face of it illegal and invalid in law. Therefore, the consequent resolution of the third respondent University dated 4-10-2001 granting provisional approval of the appointment of the fourth respondent cannot also stand. The subsequent communication of the third respondent dated 8-5-2002 also consequently becomes invalid. Accordingly, the order impugned, viz., the proceedings No.468 dated 29-9-2001 is hereby set aside.

30. Further question that arises for consideration is whether the petitioner can be appointed as 'Principal' for the second respondent College? Inasmuch as, I have held that apart from the possession P.G. Degree with at least 55% of the marks or its equivalent Grade of G for the post of a 'Principal', one should possess Ph.D. Degree or equivalent published work, and with a total experience of 15 years or 10 years of teaching/Research in Universities/Colleges and other institutions of higher education if it is from the Professor's Grade or Reader's Grade respectively as the case may be and also and that any such selection and appointment to the post of the Principal can be only by way of 'Direct Recruitment' through open advertisement, there is no scope to hold that consequent upon the setting aside the appointment of the fourth respondent, the petitioner can be straight away directed to be appointed to the post of 'Principal'. Therefore, it is for the second respondent to hold the selection afresh and in accordance with the UGC Regulations of March 2000 as adopted by the Syndicate of the third respondent University in its resolution dated 12-1-2001 and after obtaining the necessary approval of such selection from the third respondent University only, the post can be filled up on a regular basis. However, since the present appointment of the fourth respondent has been set aside as per the orders in this Writ Petition, the post cannot be kept vacant in the interest of administration of the institution. Prior to the appointment of the fourth respondent, the petitioner was holding the post as 'Principal-in-charge' of the second respondent institution. It is claimed by the petitioner that he acted as 'Principal-in-charge' from 24-9-2001 till 30-9-2001 and that only after the impugned order dated 29-9-2001, the fourth respondent claiming to have regularly appointed as 'Principal' of the second respondent college, assumed office of his own. After the filing of the Writ Petition, by an order of interim injunction dated 10-10-2001, the impugned proceedings dated 29-9-2001 was stayed till 17-10-2001. Subsequently, after hearing both parties, by an order dated 19-10-2001, the interim stay granted on 10-10-2001 was also made absolute. When the second respondent college, as well as, the fourth respondent filed Writ Appeals in W.A.Nos.2387 and 2393 of 2001 against the order dated 19-10-2001 making the interim stay absolute, by an order dated 19-11-2001, considering the prima facie case and balance of convenience, the interim order dated 19-10-2001 was set aside and the fourth respondent was held to be entitled to function as 'Principal' of the second respondent institution subject to the result of the Writ Petition. It was held that in the event of the petitioner succeeding in the Writ Petition, the petitioner would be entitled to be considered afresh in accordance with law. When the petitioner approached the Hon' ble Supreme Court in S.L.P (Civil) Nos.262 to 263 of 2002, by an order dated 21-1-2001, without disturbing the order of the Division Bench, the Writ Petition was itself directed to be disposed of. In such circumstances, I am of the view that till the fresh selection is made for the post of 'Principal' for the second respondent institution, the petitioner should be permitted to function as 'Principal In-charge as so done by the second respondent institution when the previous Principal, namely, one Thiru Dr.S.B.Raja Gopalan who went on leave from 24-9-2001 and subsequently gone on voluntary retirement.

31. Before parting with the case, I am obliged to take serious note of the stand of the third respondent University in so far as it related to the

qualification possessed by the fourth respondent and its stand before this Court in stating that the fourth respondent did possess required qualification to hold the post of 'Principal'. In the earlier part of my order, after setting out the legal position, I have held that the qualification for the various posts can be prescribed only by the UGC by virtue of the power vested with it under Section 26 (e) of the UGC Act. I have also held that the minimum qualification prescribed for the post of 'Principal', is Ph.D. apart from PG qualification with at least 55% of marks and the required experience. The syndicate of the third respondent University has also passed a resolution on 12-1-2001 adopting the UGC Regulations of March 2000. In fact, when an attempt was made for bringing certain modifications in the UGC Regulations of March 2000 with regard to qualifications for the appointment of Professors, Principals, Readers and Lecturers since such amendments as proposed were not approved by the UGC, the syndicate of the third respondent in its Meeting held on 9-11-2001 withdrew the proposed amendments. Nevertheless, it was communicated to the UGC by the third respondent university on 9-7-2002 pointing out that the appointment of the fourth respondent was in tune with the qualifications prescribed by the University and therefore, subsequent resolution of the syndicate Meeting dated 9-11-2001 which was also adopted by the Academic Council on 9-3-2002 will have no bearing on the appointment of the fourth respondent which came to be approved on 4-10-2001. The stand so taken on behalf of the third respondent is misleading on very many aspects. In fact, in this respect, the conduct of the Registrar of the third respondent University calls for drastic action.

32. In order to understand the very stand, it is necessary to refer to the following sequence of events.

(i) After the communication of the UGC Regulations 2000 which came to be made in March 2000, it is not in dispute that the third respondent University adopted the UGC Regulations along with its Annexure in its Syndicate Meeting held on 12-1-2001.
(ii) The only modification that could be noticed in the resolution dated 12-1-2001 was the addition of word 'Medicine' in the caption provided in the Annexure after the words 'Engineering and Technology'.
(iii) But from the documents placed before this Court, it transpires that after 12-1-2001, the third respondent university wanted certain other exemptions from the qualifications prescribed in the UGC Regulations as suggested by the Academic Council. The suggested exemptions were, viz.,
"(a) to EXEMPT the subjects for which UGC/CSIR/NET or SLET examinations are not conducted, till such time, these steps are included in these National/State level eligibility tests,

(b) to EXEMPT SC/ST candidates applying for lecturers positions from acquiring NET/SLET qualifications".

When the third respondent University wanted the above stated clauses to be provided ;in the Regulations, by D.O. Letter dated 3-10-2001, the UGC, New Delhi was not inclined to accept the suggested amendments.
(iv) thereafter, in the Meeting of the Syndicate held on 9-11-2001, the Syndicate resolved to withdraw the suggested amendments and that was

placed before the Academic Council for adoption.
(v) Beyond the above suggested amendments, in none of the materials placed before this Court, there was anything to suggest that the UGC approved any amendments sought for at the instance of the third respondent to the Regulations in regard to the qualifications relating to the appointment of 'Principal' either from the Professor's Grade or from Reader's Grade.

33. In such circumstances, the communication of the Registrar of the third respondent university dated 9-7-2002 to the UGC by way of reply to the UGC's communication dated 19-3-2002 is wholly misleading and certain references have been made out of context to make it appear as though there was

a tacit approval by UGC in the matter of prescription of qualification for the post of 'Principal' and in that, the qualification for a person to be appointed by way of promotion did not require the possession of Ph.D.

34. By the communication dated 19-3-2002, the UGC forwarded a representation made by an Association called 'Association of University of Teachers' dated 29-1-2002 wherein, a complaint was made while drawing the attention of the UGC to the Circular of the third respondent university dated 19-7-1995 whereby the third respondent University was permitting appointment of a 'Principal' by promotion also apart from direct recruitment and that when resorting to appointment by promotion, the qualification of Ph.D. was not insisted. When the UGC wanted the third respondent University to offer its comments to the said complaint, the Registrar of the third respondent University in its communication dated 9-7-2002 has stated that there was a modification suggested in regard to the qualification prescribed for the post of ' Principal' as per the suggestion dated 25-2-1995 which provided for filling up of the post of 'Principal' either by promotion or by direct recruitment, that when appointment by way of promotion was made, the same did not require the qualification of possession of a Ph.D., that the appointment of the fourth respondent was approved by the syndicate of the third respondent on 4-10-2001, which approval was also communicated to the second respondent after the verification of the documents on 8-5-2002, that the UGC Regulations 2000 was approved by the syndicate on 9-11-2001 and was adopted by the Academic Council on 9-3-2002 and therefore, the qualifications prescribed in the UGC Regulations 2 000 was not applicable to the appointment of the fourth respondent as his appointment took effect from 1-10-2001.

35. Therefore, the above events which took place between 12-1-2001 when the UGC Regulations came to be adopted by the syndicate in its first Meeting after the receipt of UGC Regulations of March 2000 and the so called adoption by the Academic Council in its Meeting held on 9 -3-2002, in reality, never related to any modification in the qualification for the post of 'Principal' as prescribed in the UGC Regulations of 2000. When such being the real facts, the letter of the Registrar of the third respondent university dated 9-7-2002 contending as though the qualifications prescribed in the UGC Regulations 2000 as adopted by the syndicate in its Meeting held on 12-1-2001 was not applicable to the appointment of the fourth respondent which came up for consideration before the syndicate on 4-10-2001 is highly misleading and

such a stand as taken by the third respondent university is highly condemnable. The third respondent has not only attempted to mislead the UGC by writing such a communication dated 9-7-2002, but also attempted to pursue it further by placing those letters before this Court to support its stand that the approval of the appointment of the fourth respondent by its syndicate on 4-10-2001 was in order. While on the other hand, going by the UGC Regulations 2000, the fourth respondent did not even possess the required qualification of Ph.D. and therefore, his appointment as wanted by the second respondent ought to have been rejected in limini by the second respondent. Instead, the third respondent apart from being a party to the violation of the UGC Regulations by granting a provisional approval to the appointment of the fourth respondent in its resolution dated 4-10-2001, has attempted to hoodwink the UGC itself by writing a communication dated 9-7-2002 and also attempted to further get the seal of approval of its illegal action by adopting a course which is quite unbecoming and unexpected of an institution like that of the third respondent university.

36. It is shocking to note that the third respondent university, instead of acting as an ombdusman, while overseeing the appointment to such a high post like that of 'Principal' in an educational institution, should stoop to the level of not only perpetrating an illegal conduct of an institution, but also went to the extent of supporting it by adopting unscrupulous means and stand. The conduct of the Registrar of the third respondent university calls for very severe action and I only feel and hope that the third respondent university will come up to the expectation of this Court and take appropriate corrective measures to rectify the situation, but also proceed against the concerned Registrar who was responsible for presenting the misleading communication dated 9-7-2002 to the UGC while offering its comments to very serious allegation levelled against both the second respondent as well as the third respondent university by the Association of University Teachers in its representation dated 29-1-2002 as regards the violation of UGC Regulations by the second respondent as well as the third respondent university.

37. Further, even in the resolution of the syndicate dated 4-10-2001 as far as the appointment of the fourth respondent was concerned, the resolution was to the effect that his appointment with effect from 1-10-2001 was approved subject to verification of records of selection by the University. On the very same day, under Resolution No.23, when the syndicate considered the approval of appointment of one other person, the resolution was to the following effect:
"Resolved that the appointment of Mr.Mir Hadi Ali as Principal of The New College, Chennai-14 with effect from 1-6-2001, be approved."

38. After the resolution dated 4-10-2001, till this date, there is nothing to show that the syndicate considered the case of the fourth respondent after the verification of the records of selection and granted its approval. But there is a communication of the third respondent dated 8-5-2002 to the second respondent stating that the appointment of the fourth respondent as Principal has been approved with effect from 1-10-2001 in accordance with

the decision of the Syndicate in its Meeting held on 4-10-2001. It is not known as to how the Registrar of the third respondent can take the role of the syndicate and state that the appointment of the fourth respondent has got the absolute approval of the syndicate of the third respondent university. When as stated above, wherever the syndicate wanted to grant full-fledged approval to the appointment of 'Principal', a specific resolution to that effect is passed in its Meeting. T herefore, in the absence of any subsequent resolution by the syndicate granting full-fledged approval, after verification of the records of the fourth respondent's appointment, merely, based upon the communication of the Registrar of the third respondent dated 8-5-2002, it cannot be held, that, that can be taken as the approval granted by the syndicate of the third respondent university.

In the result, the Writ Petition stands partly allowed and while setting aside the impugned proceedings No.468 dated 29-9-2001, the second respondent is hereby directed to hold a fresh selection for the post of 'Principal' in accordance with the UGC Regulations of March 2000 . The claim of the petitioner for being appointed as 'Principal' of the second respondent College is rejected. However, till regular selection for the post of 'Principal' is made by the second respondent College, the second respondent is hereby directed to permit the petitioner to act as 'Principal In-charge' as before. No costs. Consequently, W.M.P. is closed.

suk

Index: Yes
Internet: Yes

To

1. The Director of Collegiate Education,
College Road, Chennai-6.

2. The Secretary,
D.G.Vaishnav College,
Arumbakkam, Chennai-106.

3. The Registrar,
University of Madras,
Cehapauk, Chennai-5.

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